

The transfer of tangible personal property in conjunction with the provision of advertising services is generally subject to liability under the Service Occupation Tax Act. (This is a GIL.)

March 19, 1999

Dear Xxxxx:

This letter is in response to your letter dated December 2, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am in receipt of your letter dated July 23, 1998. Your response to our concerns was greatly appreciated. The clarification you provide will better enable our company to determine sales and use tax liability. We do understand that your letter is a General Information Letter and is not binding upon your Department.

I have attached a copy of your letter as it brought up issues that we felt needed further clarification. The paragraphs highlighted in your letter are addressed below.

You have made a reference to sales made by a professional photographer. We would like to know what distinguishes a professional photographer. We would like to understand it as it relates to the statement that if we use a professional photographer our tax liability would be 10% on the invoice if tangible goods are not separately broken out on the invoice versus 50% if someone other than a professional photographer is contracted and goods are not separately stated on the invoice.

One of the attachments to our letter mentioned the treatment of a category called 'fulfillment'. Your letter did not mention whether our treatment was correct so we would like for you to review it again. This is mainly a service which takes tangible goods and assembles them and ships them to various locations, either in-state or out. Would it make a difference who hires a fulfillment house? It can be our client, our agency or a printer. In some cases the fulfillment house will purchase packing and shipping materials to use in the mailing process. The goods may or may not be brought in from out-of-state for this purpose.

We are clear on the concept of temporary storage but not on the fulfillment. For example, goods a client has in storage can be shipped to a fulfillment house that they have chosen and that company packs and ships goods to various states. Another example is that a printer we have chosen to produce work picks the fulfillment house who in turn ships goods out. Many

variations can exist, sometimes we have the opportunity to chose the company, other times we do not. We always pay the company and the client reimburses us.

We occasionally use COMPANY who operate in or out of Illinois. If a Broker (located in or out-of-state) provides us a supplier outside of Illinois and that supplier ships goods into Illinois which we in turn ship out-of-state after the goods are altered, are we still allowed the temporary storage exemption? Does it matter where the broker is located or is it dependent on the location of the supplier of the goods?

Thank you again for your time and consideration in this matter. We are very interested in being compliant with Illinois State tax law and look forward to your reply.

In our July 23, 1998 letter to you we stated that the transfer of tangible personal property in conjunction with the provision of advertising services is subject to liability under the Service Occupation Tax Act. We explained the four methods under which servicemen may calculate their tax base and also provided general information regarding several items about which you had inquired. In conjunction with that earlier correspondence, you now request additional details regarding temporary storage, professional photographers and fulfillment houses.

We hope the following general information is useful. Under Illinois law, the temporary storage exemption is available for tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State. See, 86 Ill. Adm. Code 150.310(4), enclosed. Temporary storage is limited to situations where the only liability that can be involved is Use Tax. See, 86 Ill. Adm. Code 150.310(b). So long as the tangible personal property is acquired outside this State and the other conditions for this exemption are met, the fact that a broker is used to procure the goods will not affect applicability of the exemption.

As stated in our July 23 letter, photographers, film makers, and other servicemen are taxable on the photoprocessing component of their total service charge when they sell products of photoprocessing.

The tax on the photoprocessing component will apply regardless of whether the photoprocessing is performed in-house or by engaging a third-party photoprocessor. If the photoprocessing is performed in-house, the photoprocessing charge cannot be less than the photoprocessor's cost price. Such products of photoprocessing include prints, slides, photographic reproductions, and microfilm.

In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax shall be imposed on 10% of the entire selling price. This means that for professional photograpers who provide services in conjunction with photoprocessing, the method they use to bill customers will determine the appropriate amount of tax liability. As a general proposition, professional photographers can be distinguished from other retailers of products of photoprocessing by the fact they offer the service of taking or shooting the photos. When professional photographers separately state the charge for photoprocessing on their invoices, tax is imposed on those separately stated amounts. When professional photographers do not separately state the charge for

photoprocessing on their invoices, then the tax liability is imposed on 10% of the total bill. Thus the major difference for professional photographers is their tax base presumption of 10%, because for non-professional photographers it is 50%.

Regarding fulfillment houses, tax would not be imposed on their services as long as no tangible personal property were transferred in conjunction with such services. For transactions where tangible personal property, such as packaging and shipping materials, is transferred by the fulfillment house, the transactions would be subject to liability under the Service Occupation Tax Act and governed by the principles set out in our July 23 letter to you. Please remember that you are asking about multi-service situations whose tax consequences can be very fact dependent. For example, whether the parties are registered or de minimis are important as well as their location. If an Illinois fulfillment house acts as a secondary serviceman in a multi-service situation and both it and the primary serviceman are unregistered and de minimis, then the secondary serviceman could pay Use Tax to its suppliers and employ the certification option that is available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis, 35 ILCS 110/2 and 115/2.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz
Associate Counsel

KB:msk
Enc.